

REMARKS

Claims 1 – 5 and 31 have been examined. Claims 1 and 3 – 5 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Pat. No. 4,848,722 (“Webster”); and Claims 2 and 31 stand rejected under 35 U.S.C. §103(a) as unpatentable over Webster in view of U.S. Pat. No. 5,932,799 (“Moles”). The rejections are respectfully traversed.

Webster does not disclose the limitation of Claim 1 that recites “a flexible elastomer membrane overlying the non-elastomer substrate, the membrane able to be actuated into the first recess to control a flow rate of the fluid flow along the length.” The Office Action notes that Webster discloses “a flexible *polymer*” (Office Action, p. 2, emphasis added), referring to layer 8 of Webster. This layer is described in Webster as “a sheet of polyethylene film of the type sold by Dupont under the trademark Mylar” (Webster, Col. 5, ll. 42 – 43). While the Office Action is correct that layer 8 is described in Webster as a particular type of flexible polymer, there is no teaching or suggestion that the layer be a flexible elastomer as required by the claim (*see also generally* MPEP 608.01(v) regarding Office policy concerning definiteness of references to trademarks and tradenames).

The Examiner’s attention is drawn to p. 20, ll. 19 – 32 of the Application where the properties of elastomers are described, and to p. 21, l. 1 – p. 24, l. 18 where exemplary elastomers are discussed. There is no teaching or suggestion in Webster that layer 8 has the properties that qualify it as an elastomer. Indeed, the detailed description of the structure in Webster makes clear that only the flexibility of layer 8 is relevant to the operation of the described structures, unlike the claimed structures that use both the flexibility and elastomeric properties of the recited membrane.

It is accordingly believed that Claim 1 is patentable over the cited art and that each of dependent Claims 2 – 5 and 31 is patentable by virtue of its dependence from a patentable claim.

Appl. No. 09/724,784
Amdt. dated May 23, 2005
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 1772


PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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